

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File Nos.	CUID Nos.
	)	EB-02-TC-102	SC0130 (Camden)
Cencom Cable Entertainment, Inc.	)	EB-02-TC-103	SC0218 (Williamston)
Cencom Cable Income Partners II, LP	)	EB-02-TC-104	SC0518 (Kershaw County)
	)	EB-02-TC-111	TX0803 (Angleton)
Complaints Regarding	)		
Cable Programming Services Tier Rates	)		
and Petition for Reconsideration	)		

**ORDER**

**Adopted: September 30, 2002**

**Released: October 1, 2002**

By the Chief, Enforcement Bureau:<sup>1</sup>

1. In this Order, we consider a petition for reconsideration<sup>2</sup> ("Petition") of Cable Services Bureau Order, DA 95-1008 ("Prior Order"),<sup>3</sup> filed with the Federal Communications Commission ("Commission") by the above-referenced operator ("Operator").<sup>4</sup> The Prior Order resolved complaints filed against the rates charged by Operator for its cable programming services tier ("CPST") in the communities referenced above. In this Order we deny Operator's Petition in part, grant it in part, and order refunds.

2. Under the provisions of the Communications Act<sup>5</sup> that were in effect at the time the complaints were filed, the Commission is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act")<sup>6</sup> and the Commission's rules required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or local franchising authority ("LFA"). The Telecommunications Act of 1996 ("1996 Act"),<sup>7</sup> and the Commission's rules

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<sup>1</sup> Effective March 25, 2002, the Commission transferred responsibility for resolving cable programming services tier rate complaints from the former Cable Services Bureau to the Enforcement Bureau. *See Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau, Reorganization of the International Bureau and Other Organizational Changes*, FCC 02-10, 17 FCC Rcd 4672 (2002).

<sup>2</sup> Operator originally filed its petition as an application for review. However, by letter dated August 9, 2002, Operator requested that we treat its application as a petition for reconsideration.

<sup>3</sup> *See In The Matter of Cencom Cable Entertainment, Inc. and Cencom Cable Income Partners II, LP*, DA 95-1008, 10 FCC Rcd 8166 (CSB 1995).

<sup>4</sup> The term "Operator" includes Operator's successors and predecessors in interest.

<sup>5</sup> 47 U.S.C. §543(c) (1996).

<sup>6</sup> Pub. L. No. 102-385, 106 Stat. 1460 (1992).

<sup>7</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996).

implementing the legislation ("Interim Rules"),<sup>8</sup> required that a complaint against the CPST rate be filed with the Commission by an LFA that has received more than one subscriber complaint. The filing of a valid complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.<sup>9</sup> If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.<sup>10</sup>

3. During the first phase of rate regulation, from September 1, 1993 until May 15, 1994, the benchmark rate analysis and comparison with an operator's actual rates were calculated using the FCC Form 393.<sup>11</sup> The benchmark formula was revised, effective May 15, 1994.<sup>12</sup> Systems first becoming subject to rate regulation after May 15, 1994 were required to justify their initial regulated rates using forms in the FCC Form 1200 series.<sup>13</sup> Systems against which rate complaints were still pending when the Commission revised its benchmark formula were required to recalculate their benchmark rates as of May 15, 1994 using the FCC Form 1200.<sup>14</sup> The Commission's rules provide for a refund liability deferral period, if timely requested by an operator, beginning May 15, 1994 and ending July 14, 1994, for any overcharges resulting from the operator's calculation of a new maximum permitted rate on its FCC Form 1200.<sup>15</sup> However, an operator will incur refund liability from May 15, 1994 through July 14, 1994 for any CPST rates charged above the FCC Form 393 maximum permitted rate. Cable operators may update the initial FCC Form 1200 benchmark rate calculation by filing an FCC Form 1210 to justify quarterly rate increases based on the addition and deletion of channels, changes in certain external costs and inflation.<sup>16</sup>

4. In its Petition, Operator raises a number of issues that have been addressed in previous orders. Operator first argues that the Cable Services Bureau erred when imputing normalized taxes to Operator's customer equipment costs prior to unbundling those costs from Operator's service rates. The Cable Services Bureau previously addressed this issue at length in *Suburban Cable*.<sup>17</sup> The discussion in that case is directly on point and need not be repeated here. The Cable Services Bureau concluded that the benchmark rate methodology contemplates the unbundling of normalized taxes and it would be arbitrary and inconsistent for the Commission to build normalized taxes into the pricing of tier offerings and only unbundle actual taxes attributable to equipment costs. We conclude here, as the Cable Services Bureau did in *Suburban Cable*, that it was not error for the Cable Services Bureau to impute normalized

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<sup>8</sup> See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 5937 (1996).

<sup>9</sup> See Section 76.956 of the Commission's rules, 47 C.F.R. § 76.956.

<sup>10</sup> See Section 76.957 of the Commission's rules, 47 C.F.R. § 76.957.

<sup>11</sup> See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 8 FCC Rcd 5631, 5755-56, 5766-67, 5881-83 (1993).

<sup>12</sup> See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation*, 9 FCC Rcd 4119 (1994).

<sup>13</sup> See Section 76.922 of the Commission's rules, 47 C.F.R. § 76.922.

<sup>14</sup> *Id.*

<sup>15</sup> See 47 C.F.R. § 76.922(b)(6)(ii).

<sup>16</sup> *Id.*

<sup>17</sup> *In the Matter of Suburban Cable TV, Inc.*, DA 97-2032, 13 FCC Rcd 13111 (CSB 1997). See also, *In the Matter of Charter Communications*, DA 02-637 (CSB released March 20, 2002).

taxes to Operator's customer equipment costs prior to unbundling those costs from Operator's service rates.

5. The remaining issues raised by Operator in its Petition, concerning the adjustment of its inflation factor, offsetting of overcharges, sufficiency of the explanations of calculations and allegations of retroactive ratemaking, were all thoroughly addressed by the Commission in *Cencom Cable Income Partners* ("Cencom").<sup>18</sup> For all the reasons stated in that order, which we do not need to repeat here, we reject Operator's arguments concerning these issues. However, as in *Cencom*, we will allow Operator an inflation adjustment period equal to the number of whole months from September 1992 to the date Operator was required to file its FCC Form 393 in each community, in accordance with the public notice issued May 2, 1995.<sup>19</sup>

6. As a result of our adjustment, we find the total overcharges for the CPST tier for all periods under review to be *de minimis*, and it would not be in the public interest to order refunds, in the communities of Williamston and Angleton. For the communities of Camden and Kershaw County, our adjustment to Operator's inflation adjustment period for each community results in revised maximum permitted rates ("MPRs") and total CPST refund liability for all periods under review as follows, and we modify our Prior Order accordingly.<sup>20</sup>

<u>Community/ CUID No.</u>	<u>Prior MPR</u>	<u>Revised MPR</u>	<u>Actual Rate</u>	<u>Monthly Overcharge</u>	<u>Refund<sup>21</sup> Period</u>	<u>Total Refund Liability</u>
Camden/ SC0130	\$15.94	\$15.97	\$17.11	\$1.14	10/15/93- 7/14/94	\$82,669.00
Kershaw County/ SC0518	\$16.67	\$16.85	\$17.11	\$0.26	1/26/94- 7/14/94	\$11,455.00

7. Our total refund liability calculations include interest on the overcharges through October

<sup>18</sup> *In the Matter of Cencom Cable Income Partners II, LP*, FCC 97-205, 12 FCC Rcd 7948 (1997).

<sup>19</sup> See Public Notice "Cable Services Bureau Announces Policy Regarding Inflation Adjustment on Form 393," DA 95-999 (CSB 1995).

<sup>20</sup> These findings are based solely on the representations of Operator. Should information come to our attention that these representations were materially inaccurate, we reserve the right to take appropriate action. This Order is not to be construed as a finding that we have accepted as correct any specific entry, explanation or argument made by any party to this proceeding not specifically addressed herein. Information regarding the specific adjustments made to Operator's FCC Forms can be found in the public files for the above-referenced community which are available in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

<sup>21</sup> The refund periods for the FCC Form 393 overcharges begin on the date that the first valid complaint was filed with the Commission against the CPST rates charged by Operator for each specific community. Because Operator filed refund deferral letters in all of these communities, the FCC Form 393 refund period ends on July 14, 1994.

31, 2002. Our calculation does not include franchise fees. We order Operator to refund this amount, plus any additional interest accrued to the date of refund, plus franchise fees, if any, and interest on the franchise fee principal amount, to its CPST subscribers within 60 days of the release of this Order.

8. Accordingly, IT IS ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that the petition for reconsideration filed by Operator is GRANTED IN PART AND DENIED IN PART TO THE EXTENT INDICATED HEREIN.

9. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that *In the Matter of Cencom Cable Entertainment, Inc. and Cencom Cable Income Partners II, LP*, DA 95-1008, 10 FCC Rcd 8166 (CSB 1995) IS MODIFIED TO THE EXTENT INDICATED HEREIN.

10. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the community of Camden, SC (CUID No. SC0130), the total amount of \$82,669.00, plus any additional interest accruing between October 31, 2002 and the date of refund, plus franchise fees, if any, and interest on the franchise fee principal amount within 60 days of the release of this Order.

11. IT IS FURTHER ORDERED, pursuant to Section 76.961 of the Commission's rules, 47 C.F.R. § 76.961, that Operator shall refund to subscribers in the community of Kershaw County, SC (CUID No. SC0518), the total amount of \$11,969.00, plus any additional interest accruing between October 31, 2002 and the date of refund, plus franchise fees, if any, and interest on the franchise fee principal amount within 60 days of the release of this Order.

12. IT IS FURTHER ORDERED, pursuant to Sections 0.111, 0.311 and 76.962 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311 and §76.962, that Operator file a certificate of compliance with the Chief, Enforcement Bureau, within 90 days of the release of this Order certifying its compliance with this Order.

13. IT IS FURTHER ORDERED, pursuant to Sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111 and 0.311, that the complaints against the CPST rates charged by Operator in the communities referenced above ARE GRANTED TO THE EXTENT INDICATED HEREIN AND DENIED IN ALL OTHER RESPECTS.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon  
Chief, Enforcement Bureau